(16,602.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 119.

M. J. NUGENT, SUPERINTENDENT OF THE TERRITORIAL PRISON OF THE TERRITORY OF ARIZONA, APPELLANT,

vs.

THE STATE OF ARIZONA IMPROVEMENT COMPANY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

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a SUPREME COURT, } ss:
Territory of Arizona, }

I, J. L. B. Alexander, clerk of the supreme court of the Territory of Arizona, do hereby certify the annexed instrument to be a full, true, and correct copy of the transcript of the record filed in said supreme court and of all the proceedings had in said supreme court in the case of M. J. Nugent, appellant, against The State of Arizona Improvement Company, appellee; and I further certify that no opinion has yet been filed by said court in said cause in my office, and that the citation hereunto annexed is the original citation issued in said cause.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court of Arizona this 21st day of May, A. D. 1897, at Phœnix, Arizona.

[Seal Supreme Court of Arizona.]

J. L. B. ALEXANDER, *Clerk.*

b In the Supreme Court of the Territory of Arizona.

M. J. NUGENT, Sup't Territorial Prison, Appellant,
vs.
THE STATE OF ARIZONA IMPROVEMENT CO., Appellee. } No. 542.

Transcript on Appeal.

Filed this 10 day of Dec., 1896.

J. L. B. ALEXANDER, *Clerk,*
By —— ——, *Deputy Clerk.*

1 In the Supreme Court of the Territory of Arizona.

M. J. NUGENT, Sup't Territorial Prison, Appellant,
vs.
THE STATE OF ARIZONA IMPROVEMENT CO., Appellee.

Transcript on Appeal.

In the District Court of the Third Judicial District of the Territory of Arizona in and for the County of Yuma.

In the Matter of the Application of THE STATE OF ARIZONA IMPROVEMENT CO. for a Writ of Mandamus.

2 The Territory of Arizona to M. J. Nugent, superintendent of the territorial prison, Greeting:

Whereas it manifestly appears to us by the complaint of the State of Arizona Improvement Company, supported by the affidavit of Eugene F. Ives, president of said company, made in its behalf, that you have, in reply to a proper demand duly made, refused to furnish to said corporation ten able-bodied male convicts out of the

territorial prison at Yuma, properly guarded, on the outside of the gate of the territorial prison at Yuma, on the 2nd day of June, A. D. 1896, at 8 o'clock a. m., and that by such refusal you have unlawfully precluded the said corporation from a right to which it is entitled, and that there is not a plain, speedy or adequate remedy in the ordinary course of law:

Therefore we do command you that you do furnish the said State of Arizona Improvement Company ten able-bodied male convicts out of the territorial prison at Yuma, on the 2nd day of June, A. D. 1896, at 8 o'clock a. m., properly guarded, on the outside of the gate of the territorial prison at Yuma, or that you show cause before this court in the court-house in the village of Yuma, Yuma county, Arizona Territory, at the hour of 9 a. m. the 5th day of June, 1896, or as soon thereafter as the matter can be heard,
3 why the same was not done.

Witness the Hon. A. C. Baker, judge of the third judicial district of the Territory of Arizona in and for the county of Yuma, the 28th day of May, 1896. Attest my hand and the seal of the said court the day and year last above written.

[SEAL.] By C. H. BRINLEY, *Clerk.*

In the District Court of the Third Judicial District of the Territory of Arizona in and for the County of Yuma.

In the Matter of the Application of THE STATE OF ARIZONA IMPROVEMENT CO. for a Writ of Mandamus.

Now comes your complainant, The State of Arizona Improvement Company, and alleges as follows:

That it is a corporation duly organized and existing under the laws of the Territory of Arizona; that during all the time hereinafter mentioned, M. J. Nugent, a resident of Yuma, A. T., was and now is the superintendent of the territorial prison at Yuma,
4 Arizona Territory; that as such superintendent he has full charge of and control of the prisoners confined in the territorial prison, subject only to the direction of the board of control of the Territory of Arizona.

That on or about the 2nd day of December, 1895, your complainant entered into a contract and agreement with the Territory of Arizona, through its board of control, and on or about the — day of April, 1896, your complainant entered into a supplemental contract with the said territory, through its board of control, which contract, agreement, and supplemental contract the said board of control had full power and authority under the laws of the Territory of Arizona to make, a copy of which contracts are hereto attached and marked Exhibit A and made a part of this complaint.

That on the 25th day of May, 1896, your complainant did demand in writing of M. J. Nugent, superintendent of the territorial prison aforesaid, that in pursuance of said contract he furnish to your complainant on the 2nd day of June, 1896, at 8 a. m., ten able-bodied male convicts out of the territorial prison at Yuma, properly guarded, on the outside of the gate of the territorial prison at Yuma.

That on the 26th day of May, 1896, the said M. J. Nugent
5 served a written notice upon your complainant, whereby he peremptorily declined to furnish said convict labor at such time and place or at any time and place.

That your complainant has no plain, speedy, or adequate remedy in the ordinary course of law.

Wherefore your complainant prays that a writ of mandate issue out of this honorable court, directed to the said M. J. Nugent, superintendent of the territorial prison, directing him and commanding him to furnish to your complainant ten able-bodied male convicts out of the territorial prison at Yuma, on the 2nd day of June, 1896, on the outside of the prison gate of said prison at Yuma, properly guarded, and for other and further relief as to the court may seem meet and just in the premises.

L. H. CHALMERS,
Att'y for Plaintiff.

TERRITORY OF ARIZONA,
County of Maricopa, } ss:

Eugene S. Ives, being first duly sworn, on oath deposes and says that he is the president of The State of Arizona Improvement Company, the complainant herein; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, and that he makes this affidavit, for and
6 in behalf of the complainant, The State of Arizona Improvement Company.

EUGENE S. IVES.

Subscribed and sworn to before me this 26th day of May, 1896.

L. H. CHALMERS,
Notary Public.

Let an alternative writ of mandamus issue, returnable before the district court in Yuma, Yuma county, A. T., on June 5th, 1896, at 9 a. m.

A. C. BAKER, *Judge.*

This indenture made and entered into this second day of December, 1896, between the Territory of Arizona, by L. C. Hughes, governor, C. P. Leitch, auditor, and M. H. McCord, constituting the board of control of the Territory of Arizona, created by an act of the eighteenth Legislative Assembly of the Territory of Arizona, entitled, "An act to create a territorial board of control for the charitable, penal and reformatory institutions and making an appropriation therefor," approved March 8th, 1895, party of the first part, and the State of Arizona Improvement Company, the party of the second part.

7 Witnesseth, that the party of the second part having submitted its good and sufficient bond for the faithful performance of this contract, which said bond has been approved by the said board of control, and each of its members, and is herewith delivered and accepted, the said party of the first part, for and in con-

sideration of the covenants and agreements hereinafter mentioned, reserved and contained on their part, and on behalf of the said party of the second part to be done and kept and performed, hath granted, bargained, demised, leased and to farm letten to said party of the second part, its successors and assigns, all that certain real estate situated in Yuma county, Arizona Territory, more particularly described as follows, to wit: Fractional sections 12, 13, 14, 15, 22, 23, 24, and 25, township No. 8, south, range 23 west, Gila and Salt River base and meridian, Territory of Arizona, containing two thousand one hundred and fifteen (2,115) acres of land, being the land granted to the Territory of Arizona, by act of Congress, approved January 27th, 1894; also all the labor of the male convicts now in the territorial penitentiary, or who may hereafter be confined therein, to have and to hold the labor of said penitentiary convicts unto said party of the second part, and to its assigns, for the term of ten (10) years from the date of these presents; and the lands
8 and premises above described for and during and until the end of the full term of ten years to be fully completed and ended, and it is further stipulated and agreed by and between the parties hereto that in the event of the removal of the territorial prison from Yuma county, Territory of Arizona, to any other portion of the Territory, such removal will in no way, manner, shape or form interfere with the conditions, stipulations and covenants of this contract and lease.

It is further understood, stipulated and agreed by and between the parties hereto, that the party of the second part is to have the exclusive control of the labor of the convicts in the territorial prison from 8 o'clock a. m. to 5 o'clock p. m., during the said term of ten (10) years from the date of these presents, Sundays and legal holidays excepted.

It is further agreed by and between the parties hereto that the party of the first part, or its agent or agents, will furnish the said convict labor to the party of the second part, at the place or places designated by the said party of the second party, or its agents, in Yuma county, Arizona Territory, properly guarded, clothed, fed and ready to commence work at the hours, and terms heretofore mentioned, and the party of the first part shall properly guard said convicts during the hours of labor. The party of the second
9 part is to furnish all the tools and machinery necessary for the use of the convicts while at work under the conditions of this contract and lease, but the said party of the first part shall not be compelled to take outside of the prison, under guard, parties of less than five convicts.

It is hereby stipulated and agreed by and between the parties hereto, that the convicts shall perform a good day's labor, while at work, to the satisfaction of the party of the second part, and in case the place at which work is required to be performed shall be too great a distance from the prison to admit the convicts returning to the prison at night, they are to be maintained and guarded at some convenient place near the work by the party of the first part. The superintendent of the prison or agent of the Territory having the

convicts in charge shall be required to furnish the convicts in such numbers as may be required from time to time up to the amount of all the able-bodied mail convicts; to deliver them at such points or places in Yuma county, as may be demanded of him, by the party of the second part, its agent or agents. The party of the second part further agrees to keep a current and accurate account of the number of days worked by convicts, and on the first Monday of each calendar month to make a statement of the total number
10 of days done the previous month by all the convicts employed by the said party of the second part, and shall furnish a copy of the said statement to the superintendent of the Territorial prison, properly verified by an agent of the company.

The said party of the second part agrees to compensate the party of the first part for such convict labor as follows, to wit: The value of each convict's labor shall be placed at 70 cents per day, and as soon as the party of the first part has furnished convict laber at the rate of 70 cents per day, aggregating the sum of sixteen hundred ($1,600.00) dollars, the party of the second part shall issue its perpetual water-right deed for eighty (80) acres of land, of the water in its canal, when such canal is completed. The form and language of such deed shall be as near as may be that of Exhibit A, heretofore annexed, which is hereby made a part of this agreement; and the said party of the first part agrees to take, accept and execute said deed; subject to the conditions, covenants, rules, regulations, limitations and qualifications in said Exhibit A set forth and contained—such deed to be attached to the land hereinbefore described belonging to the party of the first part, as said party of the first part shall designate, until water-right deed shall have been issued for all of said lands.

11 It is further covenanted and agreed, by and between the parties hereto, that after the water rights hereinbefore provided for are earned by said party of the first part, then as soon as the labor of convicts at the rate of 70 cents per day, for each day's labor, amounts to sixteen hundred ($1,600) dollars, the party of the second part shall issue water-right certificate for one eighty (80) acre water-right.

The form and language of such certificate shall be, as near as may be, that of Exhibit B, heretofore annexed, which is hereby made a part of this agreement.

It is further understood and agreed by and between the parties hereto that the party of the second part is to have the privilege, at any time, of paying to the party of the first part 70 cents per day in cash for each day's labor performed in lieu of the issuance of water-right certificate; and should the party of the first part desire any time to sell or dispose of any of the certificates for water-rights aforesaid, the party of the second part shall have the option of purchasing the same, at a rate not less than they could be sold by the party of the first part to other parties.

It is further stipulated by and between the parties hereto in consideration of the covenants herein contained, that the said party of

the second part is to use such of said convicts' labor — this
12 contract and lease as it may from time to time require, and
such party of the second part need not commence to use any
of said labor sooner than five months from the date hereof.

It is further stipulated and agreed by and between the parties hereto, in consideration of the covenants herein contained, to be performed by each of the parties hereto, and in consideration of the convict labor herein mentioned, that the lease of the lands herein described shall commence on and from the day when water shall be conducted in the canal of the party of the second part to lands, convenient for the said water to be conducted upon the said lands hereinbefore described, and shall terminate ten (10) years thereafter; and that the party of the second part shall pay to the party of the first part, as rent therefore, an annual sum, to be hereafter determined upon in cash, or at the option of the party of the second part, one-half of the net products of the said lands; provided, however, that the said lease shall commence to run within four years from date.

It is further agreed, covenanted and declared that these presents are made, executed and delivered for the best interest of the Territory of Arizona, and for the purpose of furnishing employment for the inmates of the said Territorial prison—the labor of said inmates
being not required upon any buildings or properties of any
13 institution of the said Territory.

It is further understood and agreed that the continuance and maintainance of this contract by the party of the first part, or its successors, during its entire term, is of the essence thereof, and that the right and privileges which accrue to the party of the first part hereunder, shall be subject to and contingent upon its full entire faithful performance, and shall be forfeited and defeasible in the event of any substantial, persistent or wilfull breach thereof.

It is further understood and agreed by and between the parties hereto, that it is not intended in this contract and lease to do anything contrary to act No. 19, of the 18th Legislative Assembly of the Territory of Arizona, passed March 8th, 1895, and should this contract or lease in any manner conflict with the aforesaid act, such part so conflicting shall be null and void, and those parts not conflicting with said act shall remain in full force and virtue, it being the intention of this contract and lease to comply with the above act in every respect.

In witness whereof, L. C. Hughes, governor of the Territory of Arizona, C. P. Leitch, auditor of the Territory of Arizona, and M. H.
McCord, constituting the board of control of the Territory of
14 Arizona, having hereunto set their hands and seals this day
and year first above written, and the State of Arizona Improvement Company have caused its corporate seal to be affixed

hereto and these presents to be subscribed in its name by its president.

THE TERRITORY OF ARIZONA,
By L. C. HUGHES, *Governor:* [SEAL.]
C. P. LEITCH, *Auditor;* [SEAL.]
M. H. McCORD, [SEAL.]
Territorial Board of Control.

[SEAL.] THE STATE OF ARIZONA IMPROVEMENT COMPANY,
By C. D. BAKER, *President.*

TERRITORY OF ARIZONA, } ss:
County of Maricopa, }

Before me, Wade H. Hulings, a notary public in and for the county of Maricopa, Territory of Arizona, on this day personally appeared Louis C. Hughes, C. P. Leitch, and M. H. McCord, personally known to me to be the individuals whose names are subscribed to the foregoing instrument as members of the
[SEAL.] board of control of the Territory of Arizona, and they each of them acknowledged to me that they executed the same
15 as members of the territorial board of control for and in behalf and in the name of the said Territory of Arizona for the purposes and considerations therein expressed and in pursuance of an order and resolution of said territorial board of control directing such lease and contract to be executed by said territorial board of control.

Given under my hand and seal of office this second day of December, A. D. 1895.

WADE H. HULINGS,
Notary Public.

TERRITORY OF ARIZONA, } ss:
County of Maricopa, }

Before me, Wade H. Hulings, a notary public in and for the county of Maricopa, Territory of Arizona, on this day personally appeared C. D. Baker, president of the State of Arizona Improvement Company, to me personally known to be the individual whose name is subscribed to the foregoing instrument as the president of the State of Arizona Improvement Company, and he acknowledged to me that he executed the same as the president of said company and for and in behalf of said company for the purpose and consid-
16 erations therein expressed and in pursuance of an order and resolution of said company directing such lease and contract to be executed by signing the corporate name of the company thereto by himself as president of said company and affixing thereto its corporate seal.

Given under my hand and seal of office this second day of December, A. D. 1895.

[SEAL.] WADE H. HULINGS,
Notary Public.

The time for commencing work under this contract is hereby extended to the 10th day of June, 1896, and it is fully understood and agreed by the parties hereto that this extension is in no way to affect the legal status of said contract. It is understood and agreed that the rights of the parties thereto are to remain in *statu quo*, and the extension herein made is not intended to ratify, alter, or impair said contract or to give it any validity whatsoever that it does not before the signing of this instrument possess.

In witness whereof the parties hereto have affixed their names this twenty-second day of April, A. D. 1896.

THE TERRITORY OF ARIZONA,
B. J. FRANKLIN, *Governor;*
C. P. LEITCH, *Auditor;*
M. H. McCORD, *Territorial Board of Control.*

17 THE STATE OF ARIZONA IMPROVEMENT COMPANY,
By EUGENE S. IVES, *President.*

EXHIBIT A.

OFFICE OF THE STATE OF ARIZONA IMPROVEMENT COMPANY.

This indenture and agreement, made this — day of —— A. D. —, by and between the State of Arizona Improvement Company, a corporation, created, organized and existing under and by virtue of the laws of the Territory of Arizona, having its principal place of business at Phœnix in said Territory, party of the first part and the Territory of Arizona party of the second part.

Witnesseth: That the said party of the first part, for and in consideration of the sum of sixteen hundred ($1,600) dollars, the receipt whereof is hereby acknowledged, has granted, bargained, sold and by these presents does grant, bargain, sell, transfer, convey and confirm unto the said party of the second part, its successors

18 and assigns, one (1) eighty-acre water right in the State of Arizona Improvement Company canal, property of the party of the first part. The party of the second part, its successors and assigns, by reason of this conveyance of said water right, shall have the perpetual right to have, demand, receive and use of the water which shall flow through the canals, laterals and other works of the party of the first part, after the completion of the same, on the land, to be used in accordance with the subject to the conditions, limitations, rules, and regulations hereinafter laid down, and to be hereinafter established by the party of the first part, forty (40) miner's inchers of water, or one miner's inch of water to two acres of land.

The said eighty (80) acre water right hereby conveyed and numbered —, is hereby applied and attached to, and is to be used upon and in connection with that certain tract or parcel of land, the description whereof is as follows:

(Take in description of one eighty (80) acre tract of land under the line of the proposed canal belonging to the Territory of Arizona.)

All in section —, township — south, range — west of the Gila and Salt River meridian and the base line lying, situate and being in the county of Yuma, Territory of Arizona.

19 By miners' inch or inch of water, when the terms are used in this deed, it is intended to mean and cover the amount of water which will pass through an aperture one inch square under a pres-ure of four inches of water.

This conveyance is made, executed and delivered under and subject to the following conditions, rules aud regulations:

First. The party of the second part, its successors and assigns, shall have a perpetual right to enjoy the privileges herein conferred on the terms, conditions and limitations herein prescribed and provided, and to such extent shall have a vested and indefeasible interest in the canals, ditches, dams and gates of the party of the first part.

Second. The party of the second part, for itself, its successors and assigns, agrees to pay to the party of the first part, its successors and assigns, on the first day of May of each year, as water rental for the said eighty (80) acre water right, a sum to be fixed by the party of the first part, and not to exceed the sum of two and $\frac{50}{100}$ ($2.50) per acre.

Provided, however, that no water rents shall become due until water shall have been conducted in the canal of the party of the first part, convenient to be conducted on the lands above described, and notice thereof given to the party of the second

20 part.

Third. Said water rights shall be used to irrigate the land above described, and no other land, and for no other purpose except for domestic purposes, and for stock kept thereon, and under no circumstances shall said water, or any portion thereof, be used for mining, milling, municipal or mechanical power, or for another purpose not directly connected with or incidental to agricultural and horticultural purposes.

Fourth. The said party of the first part shall not be required to furnish a greater quantity of water for said water right than may be reasonably necessary for the production of good crops under skillful irrigation and cultivation.

Fifth. The party of the second part, its successors and assigns, shall not permit said water, or any portion thereof to run to waste.

Sixth. The party of the second part, or its agents, shall give written notice to the secretary, or duly authorized agent of the party of the first part, wherever the use of water shall be needed for the purposes aforesaid, stating the amount of water re-

21 quired and the time during which such water shall be required. It shall, thereupon, be the duty of the party of the first part, upon receipt of all water rates then due upon said water right, to deliver to the party of the second part the water to which it is entitled under these presents, at a gate on the line of any canal or lateral branch owned by the party of the first part, most convenient to the lands of the party of the second part above described, and said water shall be measured at such gate by the party of the

first part, and after such measurement the party of the second part shall and does, by these presents, become the owner of such water—the same passes over and through said gate, and the manner of delivery, measuring and regulating the supply of water to the party of the second part shall be prescribed by the party of the first part and shall be at all times under its control, and if the party of the second part or its assigns, or servants or employees, shall in any manner change, open or shut any measuring box, or by any means increase or diminish the flow of water through any gates or apertures, without the consent of the party of the first part, or in case the party of the second part shall use or supply water for any other land than described aforesaid, or shall allow any person to use it except for agricultural or domestic purposes upon the above-described land and premises, or shall in any way whatever take
22 the water from any ditch, canal, lateral or sublateral, supplied with water by the party of the first part except through a weir or measuring gate prescribed by the party of the first part, then the party of the second part shall hereby forfeit at the option of the executive committee or board of directors of the party of the first part, the right to receive water from the party of the first part for the then current year; and also all moneys paid as rental therefor for the current year.

It is further agreed, that if at any time by reason of any cause the supply of water shall be insufficient to fill and flow through said canal according to its estimated capacity, or if from any other cause as aforesaid, beyond the control of said party of the first part, the supply shall be insufficient to furnish an amount equal to all the water hereby conveyed and at the same time covered by rents paid or agreed to be paid for that year, the said party of the first part shall have the right to distribute such water as may flow through said canal *pro rata* to all persons entitled thereto, and for the purpose of so doing may establish and enforce such rules and regulations for the distribution of the water in said canals as it may be necessary or expedient, and said party of the first part shall have the right to turn the water out of the said main canal and
23 shut the water out of laterals or service ditches at any time for the purposes of enlarging, cleaning or repairing said main canal, laterals, sublaterals or dam, or repairing or putting in new or other waste weirs, head gates, water gates, service gates and bridges across said canal or laterals, or any other of the appurtenances of said canal.

Seventh. It is hereby distinctly understood and agreed by and between the parties hereto, that in case the canal of the said party of the first part, through deliveries of water have been made, shall be unable to carry and distribute a volume of water equal to its estimated capacity, either from casual or unfor-seen or unavoidable accident, or if the volume of water proves insufficient from drought or from any other cause beyond control of the said party of the first part, the party of the first part shall not be liable in any way for the shortness or the deficiency of supply occasioned by any of said causes.

Eighth. And the said party of the second part, for itself, its successors and assigns, agrees in consideration aforesaid, to waive and hereby does waive, any and all claims for loss or damages by reason of any leakage, percolation, seepage or overflow of water from any canal ditches, or from any reservoir lakes or laterals, of said
24 party of the first part, either upon the land aforesaid or any other tracts belonging to said party of the second part, anything in any statute, law or custom to the contrary notwithstanding.

Ninth. The said party of the second part shall construct and maintain in good order and repair, a ditch upon said lands of such size and grade, and at such point and location as shall be prescribed by the party of the first part, to catch and conduct to some main lateral ditch of the party of the first part, or to some natural drainage, wash or depression, all waste water flowing upon said tract of land.

Tenth. The right of way over and through the tract of land hereinbefore described, and all other lands belonging to the party of the second part, for all main canals, laterals and sublaterals, ditches, waste-water ditches, washes and natural depressions required by the party of the first part, or by any person or persons at any time entitled to water out of the canal of the party of the first part, is hereby granted unto said party of the first part, and to such person or persons entitled to water as aforesaid; and it is hereby covenanted that all ditches constructed under this agreement shall be under the perpetual control of the party of the first part, its successors and assigns, but that the party of the second
25 part assumes the responsibility to, and will at all times so control all water furnished it, by virtue of this contract, as to prevent it from flowing upon or injuring in any manner the property of any other person, or property of the party of the first part.

Eleventh. And the said party of the first part, its successors and assigns, at all times hereinafter, shall have the right to add to or change or modify the foregoing rules and regulations, or any of them so far as may be reasonable and necessary to regulate the delivery and distribution of water to said party of the second part, its successors and assigns.

Exhibit B.

Water Right Certificate of the State of Arizona Improvement Company.

This is to certify that, for valuable consideration heretofore given to the State of Arizona Improvement Company, a corporation organized and existing under the laws of the Territory of Arizona, the bearer is entitled, upon the surrender of this certificate, to a conveyance by the State of Arizona Improvement Company of one
26 (1) eighty (80) acre water right; said conveyance shall be, as near as may be, identical in form, language, purport, and intent with a certain proposed conveyance of water right attached

to and made a part of a certain agreement executed between the State of Arizona Improvement Company and the Territory of Arizona and the board of control thereof on the 2nd day of December, A. D. 1895.

Said water right shall be applicable to a definite eighty (80) acres of land under the flow of the canal of the State of Arizona Improvement Company, to be fully described in said conveyance, and shall be subject to all the conditions, covenants, regulations, limitations, and qualifications in the aforesaid agreement set forth and contained.

This certificate is issued in pursuance of a resolution of the board of directors of the State of Arizona Improvement Company passed on the — day of ——, 189–, and recorded in a minute book of the company on pages —.

In witness whereof the State of Arizona Improvement Company has caused these presents to be signed by its president and its corporate seal to be hereto affixed this — day of ——, 189–.

THE STATE OF ARIZONA IMPROVEMENT CO.,
By —— ——, *President.*

27 In the District Court of the Third Judicial District of the Territory of Arizona in and for the County of Yuma.

In the Matter of the Application of THE STATE OF ARIZONA IMPROVEMENT CO. for a Writ of Mandamus.

TERRITORY OF ARIZONA, *County of Maricopa,* } ss:

Eugene S. Ives, being duly sworn, says that he is the president of The State of Arizona Improvement Company, the complainant herein.

That he purchased and paid for nine-tenths ($\frac{9}{10}$) of the stock of the said corporation after the execution and delivery of the contract in the petition set forth and relying thereupon.

That since said purchase of said stock the deponent has sold a large portion thereof to residents of the city of New York and Washington and has been paid for the same.

The said sale and purchase were made upon the strength of the said contract, the purchasers relying upon the same.

28 That the main purpose for which the said corporation was organized is to construct a canal out of the Colorado river to irrigate a large tract of land in the Territory of Arizona.

That the said corporation has sold water rights in the said proposed canal for a sum of money aggregating upwards of $200,000.

The said water rights were purchased upon the strength of and in reliance upon the said contract.

That the said corporation is ready and willing and able to commence and continue the construction of the said canal and proposes so to do.

That it is prepared financially to work a full complement of able-bodies convicts at the territorial prison at Yuma.

That deponent believes it to be of vital importance that the construction should be commenced without delay.

EUGENE S. IVES.

Subscribed and sworn to before me this 27th day of May, 1896.

[SEAL.] L. H. CHALMERS,
Notary Public.

29 Received copy of the within proceedings and service hereby accepted this 28th day of May, A. D. 1896.

M. J. NUGENT,
Supt. Territorial Prison.

A true copy as the same appears on file in my office.

Witness my hand and seal of said court this 10th day of November, A. D. 1896.

[SEAL.] C. H. BRINLEY, *Clerk.*

In the District Court of the Third Judicial District of the Territory of Arizona in and for the County of Yuma.

In the Matter of the Application of THE STATE OF ARIZONA IMPROVEMENT CO. for a Writ of Mandamus.

M. J. Nugent, superintendent of the territorial prison at Yuma, in the county of Yuma and Territory of Arizona, responding to the alternative writ of mandamus herein, says:

30 That he excepts to the sufficiency of the petition of the applicant for the said writ herein, to wit, *that* the State of Arizona Improvement Company, and the showing therein and therewith made, and demurs thereto for the following reasons, to wit:

1st. That the said petition and the exhibits thereto fail to state facts sufficient to authorize the writ of mandamus to issue herein.

2nd. That the said petition and the said Arizona Improvement Company, by and through the said petition, seek to compel the performance of an act on the part of this respondent as superintendent of the territorial prison, which the law does not especially enjoin upon him as a duty resulting from his office.

3rd. Because the said petition seeks only to compel the performance of a contract made by others and not the said respondent.

4th. Because the said petition seeks to compel the performance of a void contract, authorized only by a pretended law, which is void.

Wherefore he prays to be discharged, exonerated, etc.

M. J. NUGENT,
By J. F. WILSON, *Attorney.*

31 Respondent, further answering as to the merits, responds and gives the court to know:

In the District Court of the Third Judicial District of the Territory of Arizona in and for the County of Yuma.

In the Matter of the Application of THE STATE OF ARIZONA IMPROVEMENT Co. for a Writ of Mandamus.

Return of M. J. Nugent, as Superintendent of the Territorial Prison, Arizona, to the Alternative Writ of Mandamus Issued Herein.

The said M. J. Nugent, as such superintendent, respectfully shows:

I.

That there is a defect of parties defendant in the above application, in this, that said superintendent is an appointee of the governor, chairman of the board of control mentioned in said application, holding his office for the period of two years from such appointment, unless sooner removed for misconduct, incompetency, or neglect of duty; that certain portions of the duties of said superin-
32 tendent are provided for by the statutes of Arizona as incumbent upon said superintendent to — and perform, such as the care and custody of the prisoners directed by courts of competent jurisdiction to be confined therein as punishment for criminal offenses of which such prisoners had been previously convicted; that certain other duties incumbent upon said superintendent to do and perform are rules and regulations which have been or may be prescribed by said board concerning the care and custody of such prisoners; that the pretended contract, a copy of which purports to be attached to the application herein, purports to have been executed on behalf of the Territory of Arizona by said board of control, and said application should have been brought against said board of control and not against said superintendent, as more fully appears by reference to said application and the exhibits thereto attached.

II.

That under an act of Congress approved June 16th, 1880, the legislature of Arizona was authorized to make provision for the care and custody of such persons as may be convicted of crime under the laws of the Territory as such Territory shall deem proper; that thereunder the Territory of Arizona, by its legislature, caused
33 the territorial prison thereof to be located and erected at the village of Yuma, in the county of Yuma, in said Territory; that the legislature of said Territory has heretofore enacted a law and sundry laws requiring the courts of competent jurisdiction sitting in the Territory to punish all persons convicted in such courts of offences to sentence such convicted persons to imprisonment in said territorial prison in all cases where the law prescribes that the punishment for the offence of which such person *has* been convicted shall be, by a sentence of such court made, imprisonment of such person in said penitentiary during the term of such sentence; that under and by virtue of the laws of Arizona the board of control

has no authority or power to direct or authorize said superintendent to exercise the right of care and custody of the persons confined in said penitentiary at any place or places other than in said penitentiary during the life of a sentence of any person duly directed to be confined therein.

III.

This defendant denies that the said board of control *has* not had nor have they heretofore had nor have they now fully or any power and authority under the laws of the Territory of Arizona to make the contract or any contract a copy of which is set out in the application herein.

34 This defendant further denies that he, as such superintendent, has full charge of, or had at the time of the filing of such application or at any time previously hereto, or that he has now full charge and control of, the prisoners confined in the territorial prison; and he further denies that whatever charge or control he may have of such prisoners such charge and control is not subject only or exclusively to the direction of the board of control.

IV.

It is further shown that said board of control, under act number 19 of the Session Laws of 1895 or under any other law of said Territory, has not heretofore had and has not now any power or authority to make, execute, or deliver the pretended contract a copy whereof purports to be attached to the application herein, in this, to wit:

That the act of the legislature recited in said pretended contract was approved March 8th, 1895, and said contract purports to have been made and entered into on the 2nd day of December, 1895, whereas, in and by said act of March 8th, said board had no power or authority in the premises after the sixtieth day from the approval of said act.

35 That said act approved March 8th, 1895, is so indefinite and uncertain as to its provisions that the said act does not vest any power or authority in said board and is inoperative in this, to wit:

That said act purports to grant power and authority to lease buildings and lands therein mentioned on shares and does not provide what moiety of said shares shall belong to the Territory or who shall determine what share or part thereof shall belong to the Territory nor what such share shall be of—that is, whether of the product of the soil, either net or gross, or whether such share shall be the profits or a part thereof in speculative or other venture.

That in and by such act it is provided that inmates of said prison may have their labor furnished under contract to responsible persons when the same may be for the best interests of the Territory, but nothing therein contained defines what shall be or who shall determine what the best interests of the Territory are in the premises.

This defendant further shows that at the time of making said pre-

tended contract and of the making of the pretended demand in the application alleged a large proportion of the inmates of said prison, estimated at three-fourths of the total number then therein, were convicted and sentenced to imprisonment therein for offenses committed long prior to March 8th, 1895; that under the laws
36 existing in said Territory prior to that date, to wit, the penal code, which went into effect the last day of July, 1887, and acts amendatory and supplemetary thereto, the power — granted solely to the judiciary of this Territory to imprison persons convicted of crime in said prison; that under the laws of this Territory no power is granted, nor is there under the Constitution of the United States, or laws of Congress any granted or inherent power in the judicial department of this Territory, to cause any person convicted of crime to be punished by working at hard labor in addition to imprisonment in said penitentiary.

That chapter 51 of the Revised Stat-es was approved March 10th, 1887, and went into effect immediately, whereas the penal code of 1887 did not go into effect until 12 o'clock noon on the 1st day of July, 1887, and thereby repealed any power or authority which the legislative department of this Territory may have granted to the executive department of the Territory under said title 51 to impose upon the inmates of said prison an additional punishment of work at hard labor or any labor at all.

Your defendant further shows that the legislative department of this Territory had no power or authority under or by virtue of the said act of March 8th, 1895, to grant to the executive depart-
37 ment of this Territory, with the said board of control, to contract for an additional punishment to the inmates of said prison, or any of them, by leasing their manual or other labor to any person or persons whomsoever.

This defendant further shows that within the laws of this Territory no power can be exercised by the executive or judicial department thereof whereby the labor of inmates, or any one of them, can be a source or cause of punishment or of contract or of such labor enforced.

V.

This defendant further shows that it is nowhere alleged in said application or shown that the said board of control have advised or informed this defendant, as such superintendent, that the pretended contract mentioned and described in the application herein was at any time heretofore executed and delivered, or that said board of control has at any time heretofore authorized, empowered, or directed this defendant, as such superintendent, to comply with or conform to any of the provisions of said pretended contract or deliver any inmates of said prison to the applicant at the gates of said prison, under guard or otherwise.

VI.

38 This defendant further shows that the said pretended contract mentioned and described in the application herein is

without consideration, power, or execution or operative, in this, to wit:

That it binds the Territory to furnish labor therefor without any remuneration or compensation to the Territory; it lets the lands of the Territory without any remuneration or compensation to the Territory.

VII.

That the said contract shows upon its face that the said board of control had no power or authority to execute the same, and is unconscionable, in this, to wit:

That the pretended bond therein recited and referred to is therein shown to have been executed, delivered, and approved before the execution of the pretended contract, whereas in and by the said law of March, 1895, after the contract was executed the said bond was given for the performance of the contract.

That in and by the provisions of said pretended contract all the labor of all the male convicts on December 8th or thereafter confined in said prison is leased without making any provisions for inmates who are ill or unable to perform labor from the exceptions of said contract, and said contract does not make any provisions for the exemption therefrom of any trusties or other inmates
39 necessarily performing service within said penitentiary, under the reasonable rules and regulations thereof.

That said pretended contract discloses upon its face that it is not to the best interests of said Territory, in this, that the same pretends to be a contract for ten years, and that in the event of the removal of the territorial prison to any other portion of the Territory such removal will in no way, manner, shape, or form interfere with the conditions, stipulations, and covenants of the pretended contract and lease, whereas in truth and in fact the cost and expense of transporting inmates of said prison from the location thereof to said Yuma county will presumably be largely in excess of any remuneration or compensation which may be received by said Territory under the provisions of said pretended contract, and that it is not to the interest of said Territory to have its boards or officers make and enter into a contract whereby the expenses of said Territory in the performance of such contract would be in excess of the remuneration or compensation to be derived therefrom.

That the said pretended contract does not contain any express provision that it is made upon the express condition that at no time shall the labor of the inmates of the said territorial prison be leased to any person or persons when the labor of the inmates of
40 said institution is required upon any building or properties thereof, but leaves the question of said condition not to the contract of the parties, but to the courts, to be determined by litigation as to what acts shall constitute such condition.

That said pretended contract does not contain any provision defining the kind or character of the work required and to be required of said inmates, or providing for the safety of said inmates or the health thereof, or any negligence which may on the part of said

company cause injuries to said inmates resulting in necessary injury and damage for which the said Territory of Arizona may be required to compensate and pay; that such work may be of such unhealthy character as to cause sickness to said inmates and corresponding expense to said Territory.

That no provision is herein made for saving the Territory harmless in case where any convict or convicts may refuse or decline to work at the request of said company.

That there is no provision in said pretended contract providing who shall determine who of said inmates, if any, are able-bodied me-, permitting thereby disputes between the parties thereto which may result in expensive litigation to the Territory.

41 That in and by said contract it is provided in one place that the party of the second part is to have the exclusive control during the ten years from the date of the instrument, but in a subsequent and controlling portion of said contract it is provided that the said instrument shall expire and be determined at the termination of ten years from the day when water shall be conducted into a canal, to be constructed in the future, which date is uncertain and unascertain-, except that the same shall not exceed four years from the date of the execution of said instrument, thereby contravening the provisions of said act of March, 1895, in this, to wit:

That no contract or lease shall be made to extend for a term of more than ten years from the time of making said lease or contract, whereas in truth and in fact said contract and lease is not to expire until fourteen years from the date thereof.

That under and by virtue of the act of March, 1895, said board of control are empowered to make an agreement only for share or for cash, whereas in and by said contract the said board of control does not obtain or be remunerated or compensated by any shares in any property, real or personal, or of anything of value, nor is there any provision in said contract by which, for anything to be done or performed by the said board of control, is the said

42 board or the said Territory to be paid in cash therefor, but, on the contrary, — the express condition of said contract in one place the compensation is fixed at 70 cents per day, payable not in cash, but in chips and whetstones, to wit, certain water rights therein described, which may or may not have any cash equivalent or other value; that in another place in said contract it is optional with the second party thereto, but not obligatory on its part, to pay for such labor in cash, and for such labor it may pay in certificates to water rights, and thereafter purchase said water rights back at a price which they may be sold to other parties *there*for, which may be a sum considerably less than the price of 70 cents per day if paid in cash.

That in said contract the rent rate is not definitely fixed, but is left to the future determination of the parties thereto, and therefor executory.

VIII.

This defendant further shows that said contract is without consideration, executed with-authority, is unconscionable, and against the best interests of the Territory, in this, to wit:

That it is against public policy to have the inmates removed
43 from said penitentiary and to permit them to remain without the walls thereof overnight or at all.

That by said contract certain territorial lands and prison labor are yielded to the exclusive control of the company; no obligation is imposed upon that company to defray any of the expenses of or safely keep prisoners while outside the prison walls.

Said pretended contract binds the Territory to a lease of the lands and to furnish such labor at any time or place in said Yuma county to be designated by the company, and binds the Territory to properly guard them, feed them, clothe them, pay their transportation expenses, and to have them on hand at any time and within the hours named by the company, and as compensation therefor the first party nor the Territory does not receive the shares of any property of value or any ca*hs* within the meaning and intent of the act under which said contract is pretended to *to* have been executed.

That said contract is a granting to said company of an especial privilege in direct prohibition of the organic act of the Territory.

IX.

This defendant respectfully shows to the court that as the duly appointed, qualified, and acting superintendent of the ter-
44 ritorial prison at Yuma, Arizona, previous to the service of the alternative writ herein, this defendant was advised and informed by the Honorable B. J. Franklin, as governor of the Territory of Arizona, that the said pretended contract mentioned in the application herein was and is of no valid force and effect, and further advised and informed in substance and to the effect that said contract was not of any legal force or binding effect upon said Territory or said board of control, and, among other things concerning the same, the said Honorable B. J. Franklin, acting as such governor, authorize- and direct- this defendant in substance and to the effect that in the event that the said State of Arizona Improvement Company should, by its officers or agents, make a demand upon this defendant to do or perform anything under the provisions of said contract, and especially if such demand should be made for the delivery of any prisoners confined in or inmates of said penitentiary to the said company, its officers or agents, at the gate of said prison or elsewhere, that this defendant, acting as such superintendent, should politely, but firmly, refuse such request or any request made or to be made under the provisions of said pretended contract; that

acting under the advice and information given by the Honor-
45 able B. J. Franklin, governor of this Territory, and of the direction of the head of the executive department of this Territory, this defendant alleges that he made the refusal complained of in the application herein and not otherwise.

The said defendant and respondent herein respectfully represents and shows to the court that the said contract authorizes and requires an indebtedness on the part of the Territory to be contracted by and on its behalf for additional guard hire, for transportation for guards, for the purchase of water rights, and other things in said contract named, none of which is to meet the casual deficits in the revenue, nor to pay interest on the territorial debt, nor to suppress insurrestion, nor to provide for the public defense, and all of which, when added to the already existing indebtedness of said Territory, will cause a total indebtedness of said Territory of more than one per cent. of the assessed value of taxable property in such Territory as shown by the last general assessment for taxation; therefore respondent avers that the said contract is contrary to the organic act of the Territory and should not be enforced.

XI.

Respondent further avers and gives the court to know that the execution of said contract would be to interfere with the executive prerogative of the governor of the Territory, and to prevent the enforcement and exercise of the same, and is therefore null.

46

XII.

Respondent further avers and gives the court to know that the State of Arizona Improvement Company has not, before the institution of these proceedings, executed and filed a good and sufficient bond enforceable in a court of law in any of the courts of this Territory for the faithful performance of said contract, as required by said pretended board-of-control act.

Wherefore this defendant prays that the said State of Arizona Improvement Company may take nothing by its said application, and that this defendant may go hence without day and recover his cost herein.

M. J. NUGENT,
Supt. Territorial Prison, Defendant,
And the relation of J. F. WILSON,
Attorney of the Territory of Arizona.

A true copy as the same appears of file in my office.

Witness my hand and seal of said court this 16th day of November, A. D. 1896.

[SEAL.] C. H. BRINLEY, *Clerk.*

47 In the District Court of the Third Judicial District of the Territory of Arizona in and for the County of Yuma.

THE STATE OF ARIZONA IMPROVEMENT COMPANY, Plaintiff,
vs.
MICHAEL J. NUGENT, Superintendent of the Territorial Prison at Yuma, Defendant.
} Judgment.

This cause having come on for trial on the 9th day of November, 1896, upon the complaint and the defendant's demurrer and answer, L. H. Chalmers appearing for the plaintiff and Hon. J. F. Wilson, attorney general, for the defendant, and defendant's demurrer having been overruled, and no evidence having been offered other than the contracts in the complaint set forth, and the defendant having declined to amend the pleadings or offer further evidence, and having elected to rest upon the pleadings as filed, and the court finding for the plaintiff and against the defendant—

Now, on motion of L. H. Chalmers, Esq., attorney for the plaintiff,

48 It is ordered, adjudged, and decreed that the plaintiff has no plain, speedy, or adequate remedy at law and is entitled to the writ of mandamus to compel its admission to the use and enjoyment of its rights to the convict labor as by the terms of the contract provided, and

That a peremptory writ of mandamus do now issue, commanding and directing M. J. Nugent, superintendent for the territorial prison, to furnish the State of Arizona Improvement Co. ten (10) able-bodied male convicts out of the territorial prison at Yuma on the 3rd day of December, 1896, at 8 a. m., properly guarded, on the outside of the gate of the territorial prison at Yuma.

It is further ordered, adjudged, and decreed that the plaintiff may have leave to apply at the foot of this decree for such further writ of mandamus or other and further relief as may be meet or just in the premises.

Done in open court this 9th day of November, 1896.

A. C. BAKER, *Judge.*

A true copy as the same appears on file and on record in the Book of Judgments of this court, pages 48 and 49, and docketed in judgment docket in my office.

Witness my hand and seal of said court this 16th day of November, A. D. 1896.

49 [SEAL.] C. H. BRINLEY, *Clerk.*

In the District Court of the Third Judicial District of the Territory of Arizona in and for the County of Maricopa.

THE STATE OF ARIZONA IMPROVEMENT COMPANY, Plaintiff.
vs.
M. J. NUGENT, Supt. Territorial Prison, Defendant.
} Motion for New Trial.

The defendant, M. J. Nugent, moves the court for a new trial in this cause for the following reasons, to wit:

First.

Because the court erred in rendering judgment of mandamus against him as the superintendent of the territorial prison, requiring him to deliver prisoners to the plaintiff herein outside the prison walls of the territorial prison for the purpose of rendering hard labor to plaintiff by virtue of the said contract declared on herein in this cause, because—

50 1. He, as such superintendent of the said territorial prison, is but the agent of the territorial board of control, which said board has the absolute control of the prison and the prisoners required to be delivered by the said judgment, and said board of control should have been sued herein instead of this defendant.

2. Because the said judgment requires this defendant to submit the said prisoners to the control of the said plaintiff to have the penalty of hard labor imposed on them, when there is no such labor nor any such penalty imposed on them by the judgment of the court that sentenced them nor any law of this Territory authorizing such to be done; therefore the said judgment requires this defendant to do that which is not authorized by law.

3. Because the said judgment requires this defendant in mandamus to do that which is to enforce contractual rights of the plaintiff with the Territory as by specific performance, when, if there is any real breach of a valid contract, there is another remedy at law for the same, and because he further says:

That the contractual rights of the plaintiff cannot be legally enforced in this way, for it is a common-law right and of a personal nature, and hence the remedy is not properly sought, and

51 mandamus will not in such action as this and in this action lie; hence the court erred in overruling defendant's demurrer herein.

Second.

Because the court erred in overruling defendant's demurrer herein and in rendering judgment against plaintiff herein for the following reasons, to wit:

1. Because the said complaint and the exhibits hereto attached show on their face that plaintiff seeks to require the defendant to deliver the said prisoners named in said complaint to plaintiff and submit them to the penalty of hard labor, when no such judgment

was ever rendered against them therefor, and hence seeks to require defendant to do that which is not required by law.

2. Because the said complaint seeks to enforce simple contractual rights between plaintiff and the Territory and of a personal nature, and therefore mandamus will not lie therefor.

3. Because the said complaint seeks to enforce the special performance of a contract of a private and personal nature by the extraordinary remedy of mandamus instead of by an action directly therefor against the parties engaged therein, and who are parties thereto, and which is not the province of the remedy by mandamus, and hence, for such purpose, the action will not lie.

52 5. Because the action seeks to enforce a contract which, if enforced, would be to confer a special privilege on the plaintiff corporation, which is prohibited by section 1889 of the organic act of the Territory.

6. Because the action seeks to coerce the Territory indirectly by sueing defendant as its agent without its consent so to do.

Hence defendant says his demurrer should have been sustained, and therefore he prays for a new trial herein.

M. J. NUGENT, *Defendant,*
By the Attorney General.

A true copy as the same appears of file in my office.

Witness my hand and seal of said court this 17th day of November, A. D. 1896.

[SEAL.] C. H. BRINLEY, *Clerk.*

In the District Court of the Third Judicial District, Territory of Arizona, County of Yuma.

53 In the Matter of the Application of THE STATE OF ARIZONA IMPROVEMENT COMPANY for the Writ of Mandamus to M. J. Nugent, Superintendent of the Territorial Prison.

The parties being present, the petitioner by L. H. Chalmers, Esq., and the respondent by J. F. Wilson, attorney general of the Territory of Arizona, the court delivers its opinion and judgment that the writ issue, and so ordered.

THE STATE OF ARIZONA IMPROVEMENT COMPANY, Petitioner,
vs.
M. J. NUGENT, Superintendent of the Territorial Prison, Respondent.

Now comes the respondent, by counsel aforesaid, and files motion for new trial, which is heard, overruled, and denied; to which ruling of the court, as well as judgment rendered on the writ, respondent excepts and gives notice of appeal in open court.

Minutes of the court of date November 9th, 1896, pages 145 and 146 of said court minutes.

54 A true copy as the same appears on the minutes of the cour on said day.

Witness my hand and seal of said court this 16th day of November, A. D. 1896.

[SEAL.] C. H. BRINLEY, *Clerk.*

In the District Court of the Third Judicial District of the Territory of Arizona in and for the County of Yuma.

THE STATE OF ARIZONA IMPROVEMENT COMPANY, Plaintiff,
vs.
MICHAEL J. NUGENT, Superintendent of the Territorial Prison at Yuma, Defendant.

The Territory of Arizona to M. J. Nugent, superintendent of the territorial prison, Greeting:

55 Whereas it manifestedly appears to us by the affidavit of Eugene S. Ives on the part of the State of Arizona Improvement Company and the party beneficially interested herein that on or about the 2nd day of December, 1895, the State of Arizona Improvement Company entered into a contract and agreement with the Territory of Arizona, through its board of control, and that on or about the — day of April, 1896, the said State of Arizona Improvement Company entered into a supplementary contract with the said Territory; that according to said contract your complainant, The State of Arizona Improvement Company, was and is entitled to the labor of the able-bodied male convicts in the territorial prison at Yuma, in Yuma county, Arizona Territory, and on the 25th day of May, 1896, your complainant, The State of Arizona Improvement Company, did demand in writing of M. J. Nugent, superintendent of the territorial prison aforesaid, that, in pursuance of said contract, he furnished to the complainant on the 2nd day of June, 1896, at 8 a. m., ten (10) able-bodied convicts out of the territorial prison at Yuma, properly guarded, on the outside of the prison gate at Yuma;

That you, the said M. J. Nugent, on the 26th day of May served a written notice upon the complainant, The State of Arizona Improvement Company, whereby you, the said M. J. Nugent, peremptorially declined to furnish the said convict labor at such
56 time and place or at any time and place; and whereas a judgment and decree was entered in the above-entitled cause on date Nov. 9, 1896, directing that a peremptory writ of mandamus issue as prayed for in the complaint in this action; and whereas it manifestly appears that the State of Arizona Improvement Company is entitled to the labor of all the male convicts confined in the territorial prison in Yuma county, Arizona Territory; and whereas there is no plain, speedy, or adequate remedy in the ordinary course of law in the premises:

Now, therefore, we do command you that immediately after the receipt of this writ you do furnish the State of Arizona Improvement Company ten (10) able-bodied male convicts out of the territorial prison at Yuma, in Yuma county, on the 3d day of December,

1896, at 9 a. m., properly guarded, on the outside of the territorial prison at Yuma, in Yuma county; and of this writ and of what you have done thereunder make due return on or before the 10th day of December, 1896.

Witness Honorable A. C. Baker, of the district court of the third judicial district of the Territory of Arizona in and for the county of Yuma, at the court-house, in said county of Yuma, and the seal of this court, this 9th day of November, 1896.

C. H. BRINDLEY, *Clerk.*

57 Received service of the within writ this 9th day of November, 1896.

M. J. NUGENT,
Supt. Territorial Prison.

A true copy as the same appears on file in my office.

Witness my hand and seal of said court this 16th day of November, A. D. 1896.

[SEAL.] C. H. BRINLEY, *Clerk.*

In the District Court of Yuma County, in the Territory of Arizona.

THE STATE OF ARIZONA IMPROVEMENT CO., Plaintiff,
vs.
M. J. NUGENT, Superintendent, Defendant.

58 The defendant in the above cause comes and makes the following assignment of errors alleged to have been committed by the court at the trial of this cause, to wit:

1. The court erred in overruling defendant's demurrer herein and erred in rendering judgment on the pleading as made and filed for the following reasons, to wit:

1. Because the complaint and exhibits thereto attached show upon their face that plaintiff seeks to require the defendant to deliver the said prisoners demanded to the said plaintiff and to submit them to the penalty of hard labor, when no judgment was ever rendered against them therefore, nor is there any law in this Territory to authorize such a judgment to be so rendered, and therefore an effort to require defendant to do an act not authorized by law.

2. Because the plaintiff in its said complaint seeks to enforce simply contractual rights claimed by it arising upon a common-law right growing out of a contract of a personal nature to it, and therefore mandamus will not lie therefor.

3. Because the said complaint of plaintiff seeks to enforce the specific performance of a contract between itself and the
59 Territory and of a private nature to it by the extraordinary writ of mandamus instead of by a direct action for that purpose against the parties to the said contract, and for which purpose defendants aver- the action brought will not lie.

4. Because the plaintiff seeks to require the defendant by mandamus to do an act as a public officer which the law does not es-

pecially enjoin on him as a duty resulting from his said office, and hence the said remedy of mandamus will not lie.

5. Because the said action seeks to enforce a private contract which, if enforced, would be to confer a special privilege on the plaintiff corporation growing out of a territorial law, which could not be conferred by the law itself and which is in violation of sec. 1889 of the organic law of the Territory.

6. Because the action seeks to coerce the action of the Territory by suing the agent of the alleged contractors of the Territory and not the real agents who made the alleged contract and without the consent of the Territory, and hence not against the proper parties to said alleged contract.

Wherefore defendant prays the judgment of this the supreme court of the Territory of Arizona that the said judgment of
60 the court below be reversed with directions to said court to sustain defendant's demurrer in said cause and to render judgment in his favor on the pleadings filed in said action.

7. Because the court erred in overruling defendant's motion for new trial for reasons therein set forth.

(Signed) M. J. NUGENT,
Superintendent,
By J. E. WILSON,
Attorney General for Arizona.

A true copy as the same appears of file in my office.

Witness my hand and seal of said court this 16th day of November, A. D. 1896.

[SEAL.] C. H. BRINLEY, *Clerk.*

61 In the District Court of Yuma County, in the Territory of Arizona.

THE STATE OF ARIZONA IMPROVEMENT COMPANY, Plaintiff,
vs.
M. J. NUGENT, Superintendent of Prison, Defendant. } Appeal Bond.

Whereas in the above-entitled cause, pending in the district court of said county of Yuma, in said Territory of Arizona, on the 9th day of November, 1896, the said plaintiff, The State of Arizona Improvement Company, recovered judgment from the said defendant in mandamus, requiring the said defendant, as the superintendent of the territorial prison, to deliver to the said plaintiff ten able-bodied prisoners outside the said prison walls, in obedience to the prayer of plaintiff herein; and

62 Whereas the said defendant is desirous of appealing from the said judgment and has appealed to the supreme court of the Territory of Arizona; and

Whereas the clerk of said court has fixed the probable amount of cost in said cause in the court below, and also in the supreme court, at $100 (one hundred dollars):

Now, therefore, we, M. J. Nugent, as such superintendent, and Isaac Levy and John Stoffela, as sureties, acknowledge ourselves bound to pay to the said plaintiff the sum of two hundred and fifty dollars ($250).

Conditioned that the said M. J. Nugent shall prosecute his said appeal with effect, and shall pay all the costs that have accrued in the court below or which may accrue in the appellate court.

Witness our hands this 12th day of November, A. D. 1896.

(Signed) M. J. NUGENT.
(Signed) ISAAC LEVY.
(Signed) JOHN STOFFELA.

TERRITORY OF ARIZONA, } ss:
County of Yuma, }

63 Isaac Levy and John Stoffela, being duly sworn, each for himself on oath and not one for the other deposes and says that he is a resident and freeholder or householder within the Territory of Arizona; that he is at least worth the amount for which he has become surety on the foregoing bond and above his just debts and liabilities, exclusive of property exempt from execution.

(Signed) ISAAC LEVY.
(Signed) JOHN STOFFELA.

Subscribed and sworn to before me this 12th day of November, A. D. 1896.

C. H. BRINLEY,
Clerk of the District Court, Third Judicial District, Territory of Arizona, County of Yuma.

I have fixed the probable amount of the costs of this suit, both of the appellate court and the court below, at one hundred dollars, and approve the foregoing bond this the 12th day of November, A. D. 1896.

C. H. BRINLEY,
Clerk of the District Court of said District of Yuma and Territory of Arizona.

64 A true copy as the same appears of file in my office.

Witness my hand and seal of said court this 16th day of November, A. D. 1896.

C. H. BRINLEY, *Clerk.*

TERRITORY OF ARIZONA, } ss:
County of Yuma, }

I, C. H. Brinley, clerk of the district court of the county of Yuma, Territory of Arizona, do certify that the foregoing 55 pages of printed matter contain a true, perfect, complete, and correct transcript of the record in the above cause, including true copies of all the original papers, the judgment-roll, record entries, and papers for appeal.

Witness my hand as such clerk and the seal of my office this — day of December, 1896.

C. H. BRINLEY, *Clerk.*

64½ In the Supreme Court of the Teritory of Arizona.

M. J. NUGENT, Superintendent of the Territorial Prison, Appellant,
vs.
THE STATE OF ARIZONA IMPROVEMENT COMPANY, Appellee.

Be it remembered that on the 11th day of January, 1897, the same being one of the judicial days of the January term, 1897, of the supreme court of Arizona, the following proceedings were had in said court in the above-entitled cause, to wit:

It is ordered that this cause be set for hearing on Monday, January 18th, 1897.

Be it further remembered that on the 19th day of January, 1897, the same being one of the judicial days of the January term, 1897, of the supreme court of Arizona, the following proceedings were had in said court in said cause, to wit:

This cause came on to be heard on this day and was argued by the attorney general for appellant.

65 Whereupon a recess was taken by the court until two o'clock this afternoon. The court having reconvened after recess, further proceedings were had therein in said cause as follows, to wit:

In this cause argument resumed by Mr. Eugene S. Ives for appellee, and the argument ordered continued until tomorrow morning.

Be it further remembered that on the 20th day of January, 1897, the same being one of the judicial days of the January term, 1897, of the supreme court of Arizona, the following proceedings were had in said court in said cause, to wit:

In this cause Mr. Ives resumed argument for appellee, and the attorney for appellant replied thereto, and cause was ordered submitted.

Be it further remembered that on the 26th day of January, 1897, the same being one of the judicial days of the January term, 1897, of the supreme court of Arizona, the following proceedings were had in said court in said cause, to wit:

This cause having been heretofore submitted and by the court taken under consideration, and the court having considered the same and being fully advised in the premises—

It is ordered that the judgment of the lower court herein
66 be, and the same is hereby, affirmed; and it is further ordered and adjudged that the appellee herein recover against the appellant herein and Isaac Levy and John Stoffela, the sureties on the appeal bond herein, its costs incurred in this court, taxed at twenty-eight and $\frac{50}{100}$ dollars.

Be it further remembered that on the 10th day of March, 1897, appellant filed in said court in said cause a motion for rehearing, of which the following is a copy, to wit:

In the Supreme Court of the Territory of Arizona.

THE STATE OF ARIZONA IMPROVEMENT Co., Plaintiff & Defendant in Error,
vs.
M. J. NUGENT, Superintendent Territorial Prison, Defendant & Plaintiff in Error.

The defendant, M. J. Nugent, superintendent of the territorial prison, defendant in the court below and appellant herein, comes and moves the court for a rehearing in this cause for the following reasons:

First.

Because it is apparent, from the announcements made by the judges, or at least one of them, from the bench in rendering
67 the decision of affirmance herei n that the court overlooked the point made and pressed herein that this is an action to enforce the common-law rights of the plaintiff, all of which arise out of a simple contract, so called, by the extraordinary writ of mandamus, and none of which is required as a duty to plaintiff resulting from an office held by defendant.

It is further apparent that the court overlooked the fact that in the event that it be found that defendant was the proper party to this action, which was the decision, then it required a good and valid contract, one enforcible at law, and with mandamus as the proper remedy for it before even then this action could be maintained.

This statement is put for the reason that one of the judges announced from the bench that he did not know whether this was a good and valid contract or not, and therefore attention is called to the fact that, admitting that the action is properly brought and against the proper party, it would then become important to know that a good and valid contract was at the bottom of the action, because the action is founded upon it. Hence error is assigned hereon.

Second.

Because it appears that the court overlooked the fact that to enforce the said contract would be to require the defendant to
68 do an unlawful act—that is to say, that he would be required to impose penalties on the prisoners demanded that were not so imposed by the judgment of conviction rendered against them and which are nowhere authorized by the criminal laws of the Territory—that is to say, that he is required to impose the penalty of hard labor on them contrary to any law authorizing the same and contrary to the judgment of conviction rendered against them; hence error.

Third.

Because it seems apparent that the court overlooked the fact that the law authorizing the board of control to make the contract with reference to the letting and leasing territorial lands and prison labor fixes the maximum time for such lease at ten years from the date of the contract, when from the face of the contract itself provisions are made for its continuation *from* a period of fourteen years; hence error.

Fourth.

It is also apparent that the court overlooked the fact that the said law requires the said board to make all such leases of the territorial lands for either cash or for part of its proceeds, when the contract agrees on neither, but leaves to the option of the plaintiff which it shall be at some time in the future, and that time is nowhere fixed nor is it fixed which it shall be.

Fifth.

69 It also seems apparent that the court failed to consider the merits of the contract *of* the contract itself. It is apparent that the court failed to consider the facts:

1. That the said contract shows on its face that the obligations, all of them, specific and costly, are on the Territory and none of them on the plaintiff. Hence the unconscionable features of it *was* overlooked.

That the fact that the said plaintiff, while maintaining extensively that it was to excavate extensive canals, &c., is not bound by the terms of the said contract anywhere or in any part of it to build any canal at all, nor is it bound to excavate any part of one. It also seem- to have failed to consider the fact that all of the obligations and expenditures, which the plaintiff urged so much it was required to do, is not required of — in the contract at all, nor is any part of it therein required; that all of the requirements and obligations on which plaintiff so much dwelt are altogether absent from the provisions of the contract itself, and hence all such claims are outside of the record itself. It is also apparent that the fact that the consideration named in the contract is that which the contract itself shows that the plaintiff company has not and never will have unless at territorial expense and not plaintiff's, meaning water rights named in the said contract, and that no guaranty is provided that the Territory shall ever receive such consideration; that
70 there is no guaranty that any consideration whatever shall be received by the Territory from the hands and acts of the plaintiff.

Sixth.

Defendant insists that, as he is but the employee of the board of control and not the party to the contract or any part of it, and as the contracting party, to wit, the board of control, was the contracting party and the party to direct the execution of the said contract,

if to be executed at all, he is not the proper party defendant, and that the said board of control should have been sued and not him.

Therefore, all the premises being seen, defendant prays that he may have a rehearing in this action, and for the reversal originally demanded by the appeal herein, and for all general relief.

M. J. NUGENT,
Supt. Ter'l Prison,
By J. F. WILSON,
Attorney General.

(Endorsed:) 542. The Arizona Improvement Co. *vs.* M. J. Nugent, supt. Ter'l prison. Motion for rehearing. Filed March 10th, 1897. J. L. B. Alexander, clerk. J. F. Wilson, attorney general, for defendant and appellee.

71 Be it further remembered that on the 15th day of March, 1897, appellee filed its appearance to appellant's motion for rehearing, of which the following is a copy, to wit:

In the Supreme Court of the Territory of Arizona.

M. J. NUGENT, Defendant and Appellant,
vs.
THE STATE OF ARIZONA IMPROVEMENT CO., Plaintiff and Appellee.

The above-named appellee, The State of Arizona Improvement Company, having been served with a motion for rehearing in this cause, respectfully submits to the court—

That the grounds of said motion are the same matters that were urged by appellant's counsel in brief and oral argument, and, said matters having been fully considered and passed upon by the court, appellee asks that said motion for rehearing be denied; and appellee here now waives time and consents that said motion
72 may be heard, considered, and determined at the next sitting of the court, on the 16th day of March, 1897.

Dated Phœnix, Arizona, March 15th, 1897.

Respectfully submitted.

L. H. CHALMERS,
Attorneys for Appellee.

(Endorsed:) No. 542. In the supreme court of the Territory of Arizona. M. J. Nugent, defendant and appellant, *vs.* The State of Arizona Improvement Company, plaintiff and appellee. Appellee's appearance on motion for rehearing, waiver of time, and consent. Service of within acknowledged this 15th day of March, 1897. —— ——, attorney for appellant. Filed March 15th, 1897. J. L. B. Alexander, clerk.

Be it further remembered that on the 16th day of March, 1897, the same being one of the judicial days of the January term, 1897, of the supreme court of Arizona, the following proceedings were had in said court in said cause, to wit:

In this cause it is ordered that the motion for rehearing of
73 appellant filed herein be submitted.

Be it further remembered that on the 17th day of March, 1897, the same being one of the judicial days of the January term, 1897, of the supreme court of Arizona, the following proceedings were had in said court in said cause, to wit:

In this cause it is ordered that motion for rehearing filed herein by appellant be denied.

Whereupon the following further proceedings were had in said court in said cause on said last-mentioned day, to wit:

In this cause the attorney general in open court gave notice of appeal from the judgment of this court herein to the United States Supreme Court and moved the court to fix the amount of the appeal bond; whereupon it was ordered that the cost bond on appeal be fixed at the sum of one thousand dollars.

In the Supreme Court of the Territory of Arizona.

M. J. NUGENT, Superintendent Territorial Prison, Appellant,
vs.
THE STATE OF ARIZONA IMPROVEMENT CO., Appellee.

74 J. F. Wilson, being duly sworn, says he is the attorney general of the Territory of Arizona and was the proper attorney of the appellant in the district court of the county of Yuma, in said Territory.

That *is* is acquainted with the value and the amount in dispute and controversy in this cause, described in the complaint of the plaintiff below, and that the value thereof is over five thousand dollars to the said Territory of Arizona, and that the full amount in controversy in this cause incurred upon the Territory of Arizona, exclusive of costs, is over five thousand dollars and is of the value of twenty thousand dollars or more.

That the same accrues or will accrue because of the fact that the additional expense and necessary outlay in the enforcement of the said contract required by the writ in this cause will amount to at least thirteen thousand dollars, exclusive of costs, and in addition to the present costs now incurred in maintaining the prisoners of said Territory.

Affiant further says that he is now aware that the record in said cause shows the value of said amount in this controversy, and this affidavit is made for the purpose of showing directly the value thereof, as the same is involved in this controversy, to be
75 above five thousand dollars, exclusive of costs, and for the purpose of perfecting an appeal of said cause to the Supreme Court of the United States and of showing to the said court that said court has jurisdiction of said cause on appeal so far as the value in controversy is concerned.

J. F. WILSON.

Subscribed and sworn to before me this 20th day of March, A. D. 1897.

[SEAL.] WILLIAM WILKERSON,
Deputy Clerk District Court, Fourth Judicial Dist., Yavapai County, Arizona.

(Endorsed:) No. 542. In the supreme court of the Territory of Arizona. M. J. Nugent, superintendent territorial prison, appellant, *vs.* The State of Arizona Improvement Co., appellee. Affidavit of value. Filed April 28th, 1897. J. L. B. Alexander, clerk.

76 In the Supreme Court of the Territory of Arizona.

M. J. NUGENT, Superintendent Terri-al Prison, Appellant,
vs.
THE STATE OF ARIZONA IMPROVEMENT Co., Appellee.

The above-named appellant, M. J. Nugent, superintendent of the territorial prison of the Territory of Arizona, conc*i*eving himself aggri-ved by the final judgment entered by the supreme court of Arizona on the 26th day of February, 1897, in the above-entitled cause, in which the judgment of the district court of the second judicial district of the Territory in and for the county of Yuma was affirmed, and in which said appellant was adjudged to be subject to deliver, on writ of mandamus, to appellee the convict labor of the said territorial prison, and in which peremptory writ was awarded to compel the said appellant to furnish to the State of Arizona Improvement Co. ten able-bodied convicts at Yuma on the 3d day of December, 1896, at 8 a. m., properly guarded, on the out-
77 side of the gate of the territorial prison at Yuma, in which judgment appellant, as defendant in the action in the court below, prayed judgment that the said plaintiff, The Arizona Improvement Co., take nothing by its said application, and that defendant go hence without day and recover his costs herein:

Therefore he hereby appeals from said judgment to the Supreme Court of the United States, and prays that his appeal may be allowed, and that a transcript of the record, proceedings, judgment, decision, and opinion in this cause be duly authenticated and sent to the Supreme Court of the United States.

J. F. WILSON,
Attorney General, Representing the Appellant in This Action.

And now, to wit, on the 20th day of March, 1897, the appeal prayed for in the foregoing petition is hereby allowed, with citation to issue on filing of bond in the penal sum of one thousand dollars, with two or more good sureties, approved by the presiding justice, the chief justice being disqualified, of the supreme court or any other associate justice sitting in said cause.

JNO. J. HAWKINS,
78 *Associate Justice of the Supreme Court, Presiding in the Aforesaid Hearing, the Same Being the Presid-Justice of the Supreme Court of the Territory of Arizona.*

(Endorsed:) No. 542. In the supreme court of the Territory of Arizona. M. J. Nugent, superintendent territorial prison, appellant, *vs.* The State of Arizona Improvement Co., appellee. Appeal. Filed April 28th, 1897. J. L. B. Alexander, clerk.

In the Supreme Court of the United States.

M. J. NUGENT, Defendant and Appellant,
vs.
THE ARIZONA IMPROVEMENT CO., Appellee. } Assignment of Errors.

The appellant in the above cause comes and makes the following assignment of errors alleged to have been committed by the supreme court of Arizona:

79 The supreme court of the Territory of Arizona, sitting as a court of appeals and reviewing the proceedings of the district court in this action, erred in finding that the district court did not err on the trial of the cause.

First. Erred in finding the law to be that the defendant's and appellant's demurrer in the court below was not well taken.

Erred in finding that mandamus would lie against the said defendant below and appellant herein, because he is but the servant of the board of control of the Territory of Arizona and not a party to the contract sought to be enforced in this action, when the said board of control was the party thereto and should have been moved against and not the defendant, the mere servant and employee of the said board.

Second. The said supreme court of Arizona erred in sustaining the judgment of the court below in holding that the said prisoners named in the contract sued on should be by the said defendant, as the superintendent of the said territorial prison, turned over to the said company and appellee herein as per their demand, because—

1. Such delivery would be to submit the said prisoners to the penalty of hard labor, when there was no judgment for such penalty ever rendered against them.

80 2. Because there is no law in the Territory of Arizona allowing any judgment of conviction to be rendered with the penalty of hard labor included therein as part of the penalty, either in the criminal code or elsewhere, and hence defendant and appellant herein is by the said judgment required to do an unlawful act toward the said prisoners—that is, to submit them in hard labor without any law for the punishment of crime in the Territory authorizing it and without any judgment being rendered against the said prisoners by the courts pronouncing the judgment of conviction against them to authorize it.

Third. The said supreme court of Arizona erred in sustaining the judgment of the court below and in holding that the contract sued on might be enforced by the extraordinary remedy of mandamus instead of by a direct action for that purpose against the parties to the contract instead of the employee of them.

2. Erred because the said plaintiff and appellee herein seeks to

equire the defendant and appellant to do an act—that is, to enforce private contract between others by mandamus—which the law oes not enjoin on him as a duty resulting from his said office, nd that the said judgment of the said supreme court of Arizona o held that the same might be and should be done. Hence error.

1 Fourth. The said supreme court erred in sustaining the judgment of the court below and, in doing it, holding that he said defendant and appellant herein should enforce the contract f others the doing of which would be to confer a special privilege n the said company by contract, which could not be done by law, nd therefore in violation of section 1889 of the organic act of the 'erritory of Arizona.

Fifth. The said supreme court erred in sustaining the judgment f the court below and in thereby holding that the plaintiff in the ction was entitled to coerce the action of the Territory by suing n mandamus, the employee of territorial agents without terri- orial consent and not the agents themselves.

Sixth. The said supreme court erred in holding that no error was ommitted by the court below and in sustaining its said judgment—

1. Because it imposed the penalty of hard labor on the said pris- ners without lawful authority, and therefore required defendant to o an unlawful act against them.

2. Because defendant was not the proper party to be sued in this ction.

3. Because the contractual right of the parties, being of a private nature, and all rights in the case, being purely contractual 2 and common-law rights, cannot lawfully be enforced by the extraordinary remedy of mandamus.

4. Because the said contract *used* on shows on its face that it is 'ithout consideration of any real kind, is contrary to public policy n taking prisoners from the prison and carrying them outside and broad at territorial expense, risk, and trouble and thus endanger- ng them to escapes without benefits, and is therefore unconscion- ble.

Seventh. The said supreme court erred in not reversing the case nd remanding the same back to the court below with directions to ustain defendant's demurrer to said cause and dismissing the same.

For all of which defendant prays a reversal, &c.

J. F. WILSON,
Attorney General of Arizona and Attorney Representing Appellant.

(Endorsed :) No. 542. M. J. Nugent, appellant, *vs.* The Arizona mprovement Co., appellee. Assignment of errors. Filed April 8th, 1897. J. L. B. Alexander, clerk.

83 In the Supreme Court of the Territory of Arizona.

M. J. NUGENT, Superintendent Territorial Prison, Appellant,
vs.
THE STATE OF ARIZONA IMPROVEMENT COMPANY, Appellee.

Statement of facts by the supreme court of the Territory of Arizona, sitting as a court of appeals on the foregoing transcript on appeal from the district court on the second judicial district of Arizona in and for the county of Yuma, where the cause was tried without a jury and settled on demurrer and the pleadings in the cause, on which demurrer, pleadings, and exhibits the said district court rendered judgment, and the appellant rested on said demurrer and appealed.

The supreme court takes the facts found by the district court on the trial in that court as agreed to by the counsel for the respective parties as the facts in this cause and as the facts are shown by the record, and make such statement of facts as found in the
84 transcript the statement of facts in this case.

From such transcript, and from the same as the statement of facts, this court finds that the district court did not commit error in refusing to award the writ of mandamus and in — granting the writ, and that the errors assigned by appellant are not well taken as the same appears in the appellant's assignment of errors on appeal to the supreme court of Arizona.

The supreme court of the Territory of Arizona further finds that the judgment of the district court ought to be affirmed. Judgment of confirmation is therefore rendered, and the writ ordered by the court below is therefore directed.

March 20th, 1897,

The above statement is a true statement of the facts in this cause and the record herein.

JNO. J. HAWKINS,
Presiding Justice of the Supreme Court of the Territory of Arizona in this Cause, the Chief Justice Not Sitting.

85 (Endorsed:) No. 542. In the supreme court of the Territory of Arizona. M. J. Nugent, superintendent territorial prison, appellant, *vs.* The State of Arizona Improvement Co., appellee. Statement of facts. Filed April 28th, 1897. J. L. B. Alexander, clerk.

In the Supreme Court of the United States.

M. J. NUGENT, Superintendent Territorial Prison, Appellant,
vs.
THE STATE OF ARIZONA IMPROVEMENT CO., Appellee.

Appeal Bond.

Know all men by these presents that we, M. J. Nugent, as principal, and L. J. Horton and B. A. Fickes, both of the county of

Maricopa, in the Territory of Arizona, being sureties for the said principal, are held and firmly bound to The State of Arizona
6 Improvement Company, appellee herein, in the sum of one thousand dollars, to be paid to said company, to its successors or assigns; — which payment, well and truly to be made, we bind ourselves and each of us, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

The conditions of the above obligation are such that the above-named appellant shall prosecute his appeal with effect, and if he fails to make his plea good, shall answer and pay all costs, then this bond shall be void; otherwise to remain in full force and effect.

Witness our hands this 20th day of April, 1897.

M. J. NUGENT,
By Attorney General.
L. J. HORTON.
B. A. FICKAS.

TERRITORY OF ARIZONA, } *ss:*
County of Maricopa, }

On this the 20th day of April, 1897, personally appeared before me, the undersigned, a notary public of the county of Maricopa, in the Territory of Arizona, the above-named sureties on the above and foregoing bond, and upon oath each for himself and not one for the other states that he is a resident, citizen, and house-
87 holder in the said county and Territory, and that he is worth the sum of the said bond in property subject to execution over and above all of his liabilities and legal exemptions.

L. J. HORTON.
B. A. FICKAS.

Subscribed, sealed, and sworn to before me this the 20th day of April, 1897.

[SEAL.] CHAS. MOORE,
Notary Public.

Commission expires 14th May, 1897.

I, John J. Hawking, presiding justice at the hearing in the supreme court of Arizona of the above cause on appeal, hereby approve of the within bond and the sufficiency of the sureties thereto this the 20th day of April, A. D. 1897.

JNO. J. JAWKINS,
Presiding Justice of the Supreme Court of the Territory of Arizona in this Cause, the Chief Justice Not Sitting.

88 (Endorsed:) No. 542. M. J. Nugent, superintendent territorial prison, *vs.* The State of Arizona Improvement Company. Appeal bond. Filed May 11, 1897. J. L. B. Alexander, clerk.

89 In the Supreme Court of the United States.

M. J. NUGENT, Superintendent of Territorial Prison, Appellant,
vs.
THE STATE OF ARIZONA IMPROVEMENT CO., Appellee.
} Citation on Appeal.

To the State of Arizona Improvement Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the 2d Monday of October, 1897, pursuant to an appeal allowed by the supreme court of the Territory of Arizona and by Justice John J. Hawkins, presiding justice of said supreme court, the chief justice not presiding, on the 20th day of March, 1897, and said appeal being allowed by said presiding justice March 20th, 1897, from a judgment rendered by the said supreme court of the Territory of Arizona on the 26th day of February, 1897, in an action pending in said supreme court, wherein you *was* plaintiff, as in the court below, and appellee in the said supreme court, and the said M. J. Nugent, as superintendent of the territorial prison of the Territory of Arizona, was appellant, to show cause why that said judgment in your favor should not be set aside, reversed, corrected, and speedy justice should not be done to the parties in whose behalf said appeal is allowed.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this the 28th day of April, 1897.

JNO. J. HAWKINS,
Presiding Justice of the Supreme Court of the Territory of Arizona, the Chief Justice Not Sitting.

Due service of the foregoing citation is hereby this day acknowledged.

This April 29th, 1897.

____ ____,
Attorney for The State — Arizona Improvement Company, Appellee in this Cause in the Supreme Court.

90 OFFICE OF THE SHERIFF, COUNTY OF MARICOPA.

I hereby certify and return that I have this day personally served this citation on the said defendant named herein, The State of Arizona Improvement Company, by delivering to Eugene S. Ives, president of said company, at Phœnix, Maricopa county, Arizona Territory, a true copy of this citation this 11th day of May, 1897.

Fees, $1.80.

L. H. ORME, *Sheriff*,
By H. C. ORME, *Deputy*.

[Endorsed:] M. J. Nugent, as superintendent of territorial prison, appellant, *vs.* The State of Arizona Improvement o., appellee. Citation on appeal. Lodged in my office this 11th ay of May, 1897. J. L. B. Alexander, clerk supreme court of Arina.

Endorsed on cover: Case No. 16,602. Arizona Territory supreme ourt. Term No., 119. M. J. Nugent, superintendent of the territoal prison of the Territory of Arizona, appellants, *vs.* The State of rizona Improvement Company. Filed June 3, 1897.